

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-29352

Issue No: 1012

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 1, 2010

Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on June 1, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Service (the department) properly propose to cancel claimant's Family Independence Agency (FIP) benefits based upon its determination that claimant was in non-compliance with Work First activities?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant was receiving Family Independence Agency benefits for herself and 3 children.
- (2) Claimant is a mandatory Work First participant.

(3) On March 11, 2010, the worker received a notice from Work First stating that claimant had been assigned to triage.

(4) On March 16, 2010, a DHS-2444 notice of non-compliance was mailed to the claimant giving the claimant an appointment for triage for March 24, 2010.

(5) Claimant attended the triage.

(6) The department found that the claimant did not have good cause for failure to attend her assignments.

(7) The department determined that this is claimant's third act of non-compliance and the case is to close for 12 months.

(8) Claimant's FIP grant remains budgeted and her Food Assistance Program budget as a part of her non-compliance penalty.

(9) On March 24, 2010, the department caseworker sent claimant notice that her Family Independence Agency benefits would be cancelled effective May 1, 2010 for non-compliance with Work First activities.

(10) On March 29, 2010, claimant filed a request for a hearing to contest the department's negative action.

(11) The negative action was deleted pending the outcome of the hearing.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department

policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The department of Human Services requires clients to participate in employment and self sufficiency related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in those activities which lead to self sufficiency. However, there are consequences for a client who refuses to participate without good cause. Non-compliance may be an indicator of possible disabilities and the department is considered further exploration of any barriers. BEM, Item 233A. As a compliance of eligibility clients must work or engage in employment and/or self sufficiency related activities. Non-compliance of applicants, recipients and member adds, means doing any of the following without good cause:

- Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification and clients can reply at any time.
- Failing to or refusing to appear or participate with the Jobs Education and Training program, or other employment service providers
- Complete a family automated screening tool (FAST) as assigned in the first step in the FSSP process.
- Develop a family self sufficiency plan
- Comply with activities assigned in the FSSP.
- Provide legitimate documentation of work participation
- Appear for a scheduled appointment or meeting related to assigned activities
- Failure to participate in employment or a self sufficiency related activities
- Accept a job referral

- Complete a job application
- Appear for a job interview
- Stating orally or in writing to a definite intent not to comply with the program requirements
- Threatening, physically abusing, or otherwise behaving destructively to anyone conducting or participating in an employment and/or self sufficiency related activity
- Refusing employment support services as a refusal prevents participation in employment and/or self sufficiency related activities (BEM, Item 233A, p.2)

In the instant case, the department indicated that the non-compliance in Work First activities was on February 25, 2010, when claimant did not report for a job search check-in, nor did she contact the Work First worker to provide a valid excuse for missing the required check-in between 8-9 a.m.

Claimant testified on the record that she did not get to the assignment on time because the dial-a-ride bus came late. The Work First caseworker indicated that she contacted dial-a-ride on February 25, 2010, and the dial-a-ride person indicated that claimant actually missed the first dial-a-ride bus because she wasn't prepared to leave when it arrived and that she had to take the 2nd dial-a-ride bus, which made her late for her assignment.

Claimant did not report for job search check-in or contact the department with a valid excuse for missing the required check-in on March 4, 2010. Claimant gave the same excuse that dial-a-ride was late to pick her up and she couldn't get there before 9 a.m. The department caseworker said that she did not check on that date to see if dial-a-ride was actually late or if claimant missed the early dial-a-ride bus. Claimant testified on the record that dial-a-ride was

late and gets her to her appointments when it gets there and does not always arrive on time. The department caseworker testified that there were other participants in the check-in that day who also had to participate in another mandatory activity and had arrived early on the dial-a-ride system and had gotten to their check-in on time.

At the March 24, 2010, triage, claimant was determined to not to have good cause for her failure to attend the two check-in dates. She became very upset and angry and the department caseworker testified that she used foul language and stormed out of the office and the negative action was put on the claimant's case for 12 months because she was assigned to triage due to non-compliance on August 27, 2008. A DHS-2444 form was sent to client on September 2, 2008, giving the claimant a triage appointment for September 10, 2008. The claimant attended the triage and no good cause was found for her failure to comply and a compliance test was offered and accepted and the compliance test began September 15, 2008. The claimant passed the compliance test and remained eligible for Family Independence Program benefits. The department also testified that, in exhibit 10, claimant received notice of non-compliance on an assignment on triage on December 5, 2008. A DHS-2444 was sent to the claimant on December 12, 2008, giving the claimant a triage appointment for December 17, 2008. The claimant attended the triage. During the triage claimant admitted that she was wrong and that no good cause could be found. Family Independence Program benefits were closed for 3 months as this was the claimant's 2nd act of non-compliance. Family Independence Program closed for January, February and March of 2009. (Exhibit 10)

Good cause is a valid reason for non-compliance with employment and/or self sufficiency related activities that are based on factors that are beyond the control of the non-compliant

person. A claimant with good cause must be verified for member adds and recipients. Good cause includes the following:

- The person is working at least 40 hours a week on average and earning at least state minimum wage.
- if the claimant is physically or mentally unfit for the job or activity, or
- if the claimant has a debilitating illness or injury, or
- an immediate families illness or injury requiring in-home care by the claimant, or
- the department or employer has failed to make reasonable accommodations for the claimant's disability, while the claimant has no child care.
- If the claimant requested transportation services from DHS, the Michigan Works or other employment services provider prior to case closure and reasonably priced transportation was not available to the claimant.
- The employment involves illegal activities, or
- The claimant experiences discrimination.
- There is some unplanned event or factor such as:
 - domestic violence
 - health or safety risks
 - homelessness
 - jail hospitalization or
 - religion
- or the claimant quits to assume the employment comparable on salary and hours
- there is a total commuting time which exceeds 2 or 3 hours per day, including time to and from child care facilities. (BEM, Item 233A, pp. 4-5)

The penalty for non-compliance without good cause is FIP closure effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, close FIP for not less than 3 calendar months, unless the claimant is excused from non-compliance.
- For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months
- For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.

The penalty counter also begins April 1, 2007, regardless of the previous number of non-compliance penalties. Begin a sanction period with the first pay period of the month. Penalties are automatically calculated by the entry of non-compliance without good cause in BRIDGES. This applies to active FIP cases including those with a member add who is a WEI JET participant. BEM, Item 233A, p. 6. JET Participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss non-compliance and good cause. A triage meeting is to be locally coordinated to notify the MWA case manager of triage meetings including scheduling guidelines. Claimant's can either attend the meeting or participate in a conference call, if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. Claimant's must comply with triage requirements within the negative action period. BEM, Item 233A, p. 7. The department is to determine good cause based on the best available information during the triage and prior to the negative action date. Good cause may be verified by information already in the file with DHS or MWA. Good cause must be considered even if the claimant does not attend with particular attention to possible disabilities, including disabilities

that have not been diagnosed or identified by the claimant an unmet needs or accommodation. BEM, Item 233A, p. 7. The department is to follow the following procedure for processing the FIP closure:

- Send a DHS-2444 notice of employment and/or self sufficiency related non-compliance within 3 days after learning of the non-compliance.
- Included in the DHS-2444 is the date of non-compliance, the reason the client was determined to be non-compliant, the penalty that would be imposed, and schedule a triage to be held within the negative action period. BEM, Item 233A, pp. 7-8.

The department is to determine good cause during triage and prior to the negative action effective date. Good cause must be verified and can be based on information already in the file with the DHS or the JET program. The department is to document the good cause determination on the sanction detail screen. If the client does not provide good cause for reason for non-compliance determining good cause based on the best information available.

This Administrative Law Judge finds that the department has established by the necessary competent, material and substantial evidence on the record that claimant was non-compliant with Work First activities. Claimant had 2 prior non-compliance episodes which mean that this is the third non-compliance episode.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Family Independence program benefits because claimant did not report for a job search check-in, nor did she contact the Work First caseworker to provide a

valid excuse for missing the required check-in. This Administrative Law Judge finds that claimant did not provide good cause for her failure to miss her check-ins on February 25, 2010, and March 4, 2010. The department has established by preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 9, 2010

Date Mailed: June 10, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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